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Friday, 28 February 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before with the
exception of: HONORABLE JUSTICE E. NORTHCROFT,
Member from New Zealand, now sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

- - -

The Accused:

All present except OKAWA, Shumei, who is
represented by his counsel.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in ses-
3 sion.

4 THE PRESIDENT: Mr. Horwitz.

5 MR. HORWITZ: Mr. President, when the
6 Tribunal rose yesterday afternoon the President
7 commented upon the translation of exhibit 77. As
8 you will recall, these documents were presented in
9 the very early stages of the case. At that time
10 the question of mechanics of translation and cor-
11 rections was not yet worked out. These particular
12 documents, presented at the very time they were,
13 presented a particular problem. Both the Japanese
14 version and the English version were supplied by
15 the Japanese Government and certified by the Govern-
16 ment. In view of that fact we felt that both
17 versions were in a sense official copies and both
18 were originals. We did not feel that we had a right,
19 therefore, to change the translation. However, we
20 feel, as both the defense and Tribunal feel, that
21 certain of these documents, their translation
22 is inadequate. In view of this the prosecution pro-
23 poses to submit new translations for certain of
24 these documents to the Board of Translation for
25 approval. When the Board approves these translations

1 they will then be submitted to the Tribunal in
2 substitution for the older translations. Mr. Logan
3 advises me that the defense consents to this pro-
4 cedure.

5 THE PRESIDENT: The Tribunal must have
6 good English translations of the Japanese originals,
7 and even the Japanese Foreign Office is capable of
8 supplying bad ones. I do not know why you felt
9 obliged to tender bad translations. You could have
10 got a good one at the start. These translations
11 are not evidence in themselves that you must tender
12 because the Japanese supply them.

13 Dr. ONO.

14 MR. ONO: We now read exhibit No. 78
15 presented by the prosecution, which is the Regula-
16 tion of General Staff Office to show the functions
17 of the General Staff Office and the duties and
18 competence of the Chief of General Staff.

19 (Reading): "REGULATION OF GENERAL STAFF
20 OFFICE.

21 "1. The General Staff Office is the
22 place to supervise National Defense and Logistics.

23 "2. A general or a lieutenant-general is
24 appointed by the Emperor to the post of the Chief
25 of the General Staff, and is placed under the direct

1 command of the Emperor, attends the war council,
2 takes charge of the formation of plans for national
3 defense and strategy, and supervises the General
4 Staff Office.

5 "3. The Chief of the General Staff
6 supervises those military officers who occupy
7 the posts of staffs, takes charge of their educa-
8 tion and superintends the Military Staff College
9 and Land Survey Department.

10 "4. The Deputy Chief of the General
11 Staff assists the Chief and takes charge of the
12 whole office.

13 "5. The Director of each Department of
14 the General Staff Office is responsible to the
15 Chief, superintends the heads and others of the
16 sections and controls their main duties."

17 We now read exhibit No. 79 presented by
18 the prosecution, which is the Imperial Ordinance
19 relating to the Organization of Naval General Staff
20 Office to show the functions of the Naval General
21 Staff Office and the duties and competence of the
22 Chief of Naval General Staff Office.

23 (Reading): "Imperial Ordinance relating
24 to the Organization of the Naval General Staff
25 Office. (As of December 7, 1941).

1 "Article 1. The Naval General Staff
2 Office shall take charge of matters concerning
3 national defense and the use of armed strength.

4 "Article 2. There shall be the Chief of
5 the Naval General Staff Office. He shall be per-
6 sonally appointed by the Emperor.

7 "The Chief shall be directly subordinate
8 to the Emperor, take part in the confidential
9 affairs of the Emperor's headquarters and control
10 the Naval General Staff Office.

11 "Article 3. The Chief shall take charge
12 of plans for national defense and for the use of
13 armed strength, and shall transmit matters con-
14 cerning the use of armed strength.

15 "Article 4. There shall be instituted
16 in the Naval General Staff Office the following
17 personnel:

18 "Vice-Chief; Adjutants; Divisional
19 Directors; Sectional Chiefs; Staff Members; 'Tsuki'
20 (Assistants).

21 There shall, as necessity may require, be
22 instituted Officers, or High Civil Officials, as
23 'Shusshi' (Attendants) in addition to the personnel
24 mentioned in the preceding paragraph.

25 "Article 5. The Vice-Chief shall assist

1 the Chief, supervise the Divisions and coordinate
2 the affairs of the Divisions."

3 Skipping to Article 7:

4 "The Divisional Directors shall, under
5 the orders of the Chief, direct the Sectional
6 Chiefs and lower personnel, and take charge of the
7 affairs of which the principal competency belongs
8 to them, respectively.

9 "The Sectional Chiefs and the Staff Mem-
10 bers shall, under the orders of their respective
11 superiors, engage in the discharge of their duties.

12 "Article 10. There shall be instituted,
13 at the Japanese Embassies and Legations abroad,
14 Combatant Officers as Embassy and legation Naval
15 Attaches and Assistant Naval Attaches, and the
16 Chief shall control them.

17 "In addition to the personnel mentioned
18 in the preceding paragraph, Officers, Special
19 Service Officers, Warrant Officers, Non-commissioned
20 Officers, Men and 'Hannin' Civil Officers, may be
21 attached as 'Tsuki' (Assistants) to the Japanese
22 Embassy Naval Attaches serving in Manchoukuo and
23 the Republic of China."
24

25 We now read exhibit 10. 80 presented by
the prosecution, which is the Ordinance of

1 'DAIHONEI' (Imperial General Headquarters).

2 This will show the setup of 'DAIHONEI.' We read
3 Articles 1 and 2:

4 "1. The Supreme Command is established
5 under the direct command of the Emperor, which is
6 called 'DAIHONEI.'

7 "'DAIHONEI' is organized in wartime or
8 incident-time in case of necessity.

9 "2. The Chiefs of General Staff and
10 Naval Staff are the chief of each staff, whose
11 duty is to take part in the highest momentous
12 affairs, to make plan of operation and consider-
13 ing last object, to arrange the cooperation and
14 the united action of Army and Navy."
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1 We now read exhibit No. 81 presented by
2 the prosecution which is the law of the Houses.
3 This will show the organization and functions of
4 the Imperial Diet.

5 (Reading): "Law of the Houses.

6 "Article 1. An Imperial Proclamation
7 for the convocation of the Imperial Diet, fixing the
8 date of its assembling, shall be issued at least
9 forty days beforehand."--

10 THE PRESIDENT: These details are not
11 necessary.

12 MR. ONO: (Reading continued)

13 "Article 2. The Members shall assemble
14 in the Hall of their respective Houses, upon the
15 day"--

16 I shall then omit reading further because
17 of this -- because their relevance is not very great.
18 I wish to point out to the Tribunal that in Japan
19 there was also a Parliament and that there was also
20 a House of Representatives elected by popular vote.

21 THE PRESIDENT: That is sufficient for the
22 time being. If in the course of presenting the
23 defense it becomes necessary to refer to the powers
24 or authorities of the Parliament you may do so to
25 the extent required.

1 MR. ONO: Thank you, sir.

2 We now read exhibit No. 82 presented by
3 the prosecution which is the Imperial Ordinance
4 concerning the House of Peers. This will show the
5 organization and functions of the House of Peers.

6 THE PRESIDENT: There is no need to read
7 it.

8 MR. ONO: We now read exhibit No. 83
9 presented by the prosecution which contains the
10 ordinance concerning the organization of the Privy
11 Council and the regulations for the conduct of
12 business of the Privy Council. These will show the
13 organization and functions of the Privy Council.

14 THE PRESIDENT: Well, the Privy Council
15 has frequently been mentioned in evidence. It may
16 be desirable to know just how it functions but you
17 need not read the whole of this. Actually, I do not
18 think it is necessary to refer to any of it at this
19 stage. We all have some familiarity with its oper-
20 ations. If we are in doubt we can use this exhibit.

21 MR. ONO: Among the accused there are several
22 who have been Privy Councillors and for this reason
23 I would like to read the most important articles but
24 not the whole text, and this is also mentioned in the
25 Indictment.

1 THE PRESIDENT: Brigadier Nolan set out the
2 functions of this body very clearly in his address.
3 You do not contest the accuracy of anything he said?

4 MR. ONO: We have no idea of contesting what
5 Brigadier Nolan has said but we should like to give
6 an accurate idea to the Court of the organization of
7 the Privy Council.

8 THE PRESIDENT: You can do that in brief
9 terms. There is no need to read the whole of this
10 ordinance.

11 MR. ONO: We want to read the very important
12 parts of it.

13 (Reading): "Ordinance Creating and Regulating
14 the Privy Council.

15 "Article I. The Privy Council shall be
16 the place at which it will be the Emperor's pleasure
17 to attend and there hold consultation on important
18 matters of State.

19 "Article II. The Privy Council shall be
20 composed of a President, a Vice-President, twenty-four
21 Councillors, a Chief Secretary and Secretaries. The
22 number of full-time Secretaries shall be fixed at
23 three.

24 "Article VIII. Though the Privy Council is
25 the Emperor's highest resort of counsel it shall not

1 interfere with the executive."

2 That is all, sir.

3 We now read exhibit No. 84 presented by
4 the prosecution which is the General Mobilization
5 Law. This will show the contents of the Japanese
6 general mobilization law. This will also show that
7 in order to issue Imperial ordinances based on this
8 law it was necessary to inquire the National General
9 Mobilization Commission established by this law.
10 The set-up of the said commission will be proved
11 later on.

12 THE PRESIDENT: Here again you can tell
13 us all we need to know in brief terms.

14 MR. ONO: (Reading) "General Mobilization
15 Law.

16
17 "Article 1. The term national general
18 mobilization as used in this law denotes the control
19 and operation of human and material resources in order
20 that the nation may be enabled to display its total
21 power most effectively for the realization of national
22 defense purposes in time of war (including an incident
23 corresponding with a war, the same applying correspond-
24 ingly to the following parts).

25 "Article 2. The term general mobilization
goods in this law denotes things listed below:

1 (1) armaments, war vessels, ammunitions and other
2 military goods, (2) garments, foodstuffs, beverages
3 and fodders which are necessary for national general
4 mobilization, (3) medicines, medical instruments,
5 other sanitary materials and veterinary materials
6 which are necessary for national general mobilization,
7 (4) "--

8 THE PRESIDENT: Dr. ONO, I am told that
9 the first eleven articles have already been read.
10 In any event we want to know when these particular
11 articles which we allow you to read were enacted.
12 It appears that this is a consolidation of a number
13 of laws made in different years. We want to know
14 which particular law was made in any particular year.

15 MR. ONO: The text I have been reading is
16 law No. 55, dated April 1, 1938, which consolidates
17 all the previous laws. This law being very complicated,
18 I wish to ask your Honor's permission to read only
19 Article 50.
20

21 (Reading) "Article 50. The National General
22 Mobilization Commission shall be established to respond
23 to inquiries from the Government regarding important
24 matters relative to the enforcement of this law,
25 (exclusive of those pertaining to the military rules).

"Rules governing the National General

1 Mobilization Commission shall be prescribed by
2 Imperial Ordinance."

3 We shall give explanations concerning the
4 National General Mobilization Commission later but
5 I want to point out that the members of this commis-
6 sion were chiefly members of both Houses of Parliament,
7 the House of Representatives and the House of Peers.

8 We now read Exhibit No. 87 presented by
9 the prosecution which is the Imperial Ordinance
10 relating to the Organization of the Ministry of
11 Overseas Affairs to show the duties and competence
12 of the Minister of the Overseas Affairs.

13 (Leading) "Article 1. The Minister of
14 Overseas Affairs shall supervise affairs concerning
15 the Government-General of Chosen, the Government-
16 General of Taiwan, the Government of Karafuto and
17 the Government of the South Seas, and shall super-
18 intend the business of the Toyo Takushoku Kabushiki
19 Kaisha (Oriental Development Company, Ltd.).
20

21 "The Minister of Overseas Affairs shall,
22 with the exception of matters concerning foreign
23 affairs, assume control of affairs concerning
24 emigration and of affairs concerning the guidance
25 and encouragement of overseas development enter-
prises in other than Manchuria and China.

1 "The Minister of Overseas Affairs shall,
2 in connection with the affairs mentioned in the
3 preceding paragraph, direct and superintend the
4 Consular Offices concerned acting through the
5 Minister of Foreign Affairs."

6 We now read exhibit No. 88 presented by
7 the prosecution which is the Imperial Ordinance
8 relating to the Organization of the Ministry of
9 Home Affairs to show the duties and competence
10 of the Minister of Home Affairs.

11 (Reading) "Article 1. The Minister of
12 Home Affairs shall supervise affairs concerning
13 local administration, the election of members of
14 legislative assemblies, police, public works, local
15 planning, city planning, air defense, geography,
16 publication, copyrights, and colonization; and
17 shall superintend the Superintendent-General of
18 Metropolitan Police, the Governor-General of Hok-
19 kaido and the Prefectural Governors.

20 "Article 4. There shall be instituted in
21 the Ministry of Home Affairs the following four
22 Bureaus:

23 "Local Affairs Bureau.

24 "Police and Public Order Bureau.

25 "National Land Bureau.

"Air Defense Bureau.

"Article 5. The Local Affairs Bureau shall take charge of the following affairs:

"1. Matters concerning the election of members of legislative assemblies."

THE PRESIDENT: Why read all this?

MR. CNO: Then I shall stop here.

We now read exhibit No. 89 presented by the prosecution which is the ordinance relating to the Organization of the Ministry of Munitions to show the duties and competence of the Minister of Munitions.

THE PRESIDENT: It is hardly necessary to read that.

MR. CNO: It is to prove the organization of the Munitions affair in time of war.

THE PRESIDENT: If you have to rely on it, you can point out the particular provision that is relevant.

MR. CNO: I should like to read only Article 1.

(Reading) "Organization of the Ministry of Munitions.

"Article 1. The Minister of Munitions shall administer the following affairs:

1 "1. Matters concerning the fundamentals
2 of National mobilization.

3 "2. Matters concerning mining and the
4 manufacturing industry in general.

5 "3. Matters concerning the production,
6 distribution, consumption and prices of the products
7 of mining and the manufacturing industry (except
8 the rolling-stock, safety apparatus for railway
9 signals, ships, articles for ships, products of
10 the textile industry and other products of the
11 manufacturing industry which are mainly used for
12 civilian consumption: hereinafter to be called
13 collectively the material under the jurisdiction
14 of the Ministry).

15 "4. Matters concerning the production
16 control, ordering and procurement of raw materials
17 and materials for principal munitions and of speci-
18 fied munitions.

19 "5. Matters concerning such controls over
20 the utilization of private factories and the guidance
21 concerning their equipment and management as are
22 needed to meet military demand.

23 "6. Matters concerning the management of
24 labor, wages, adjustment of funds (except matters
25 concerning the procurement of funds) and control of

1 accounting (except matters concerning the increase of
2 dividend) in the enterprises whose purpose is the
3 production or distribution of the material under
4 the jurisdiction of the Ministry or electric power
5 (in case the enterprise is concurrently engaged in
6 the undertaking for other purposes, this provision
7 is applicable only to that part of the enterprise
8 which is being operated for the above-mentioned
9 purpose; hereinafter to be called the enterprises
10 under the jurisdiction of the Ministry.)

11 "7. Matters concerning electricity and
12 hydraulic power for the generation of alcohol and
13 petroleum.

14 "The Minister of Munitions may, if necessary
15 for the execution of the affairs mentioned in Number
16 1 of the preceding paragraph, request other Govern-
17 ment offices concerned to furnish him with reference
18 material or explanations."

19 We now read exhibit No. 90 presented by
20 the prosecution which is the Imperial Ordinance
21 relating to the Organization of the Greater East
22 Asia Affairs Ministry to show the duties and compe-
23 tence of the Minister of Greater East Asiatic Affairs.

24 (Reading) "Article I. The Minister of
25 Greater East Asiatic Affairs shall administer the

1 execution of various political affairs (excepting
2 purely diplomatic affairs) concerning Greater East
3 Asia (herein and hereafter defined as excluding
4 Japan Proper, Korea, Formosa and Saghalien), affairs
5 concerning the protection of the commercial interests
6 of Japan in the countries within the aforesaid sphere,
7 affairs concerning Japanese subjects residing in
8 that sphere and affairs concerning emigration, colo-
9 nization and cultural works in that sphere.

10 "The Minister of Greater East Asiatic
11 Affairs shall superintend affairs concerning the
12 KWANTUNG Bureau and of the South Seas Government
13 Office.

14 "The Minister of Greater East Asiatic
15 Affairs shall direct and supervise diplomatic and
16 consular officials stationed in Greater East Asia
17 in respect of the affairs specified in the first
18 paragraph.

19 "Article II. There shall be instituted
20 the following four Bureaus in the Ministry of
21 Greater East Asiatic Affairs:

22 "The General Affairs Bureau

23 "The Manchurian Affairs Bureau

24 "The Chinese Affairs Bureau

25 "The Southern Area Affairs Bureau."

1 There is a point on which I would like to
2 draw the attention of the Court. This organization
3 has been established by an Imperial Ordinance of
4 November 1, 1942. By this, diplomatic matters
5 concerning the Greater East Asia Sphere have been
6 practically put into the hands of the Minister of
7 the Great East Asia. In consequence, the prerogatives
8 of the Foreign Minister have been circumscribed just
9 that much.

10 MR. ONO: Not "prerogatives" but "competence."

11 THE INTERPRETER: "Competence."

12 I should like to point out -- draw the
13 attention of the Court to the fact that the organi-
14 zation of the Foreign Ministry, which I read yester-
15 day, had been established before the present Imperial
16 Ordinance.

17 We now read exhibit No. 91 presented by
18 the prosecution which is the Imperial Ordinance
19 relating to the Organization of the Ministry of
20 Education to show the duties and competence of the
21 Minister of Education.

22 (Reading) "Article 1. The Minister of
23 Education shall administer affairs concerning edu-
24 cation, arts, sciences and religion.

25 "Article 4. There shall be instituted in

1 the Ministry of Education the following seven
2 Bureaus:

3 "Special School Affairs Bureau

4 "Common School Affairs Bureau

5 "Vocational School Affairs Bureau

6 "Social Education Bureau

7 "Physical Training Bureau

8 "Text-Books Bureau

9 "Religion Bureau."

10 That is all.

11 We now read exhibit No. 92 presented by
12 the prosecution which contains the Imperial Ordinance
13 relating to the Organization of the Prisoner of War
14 Information Bureau and the Imperial Ordinance re-
15 lating to the Prisoner of War Internment Camp. These
16 will show the regulations concerning the Prisoner of
17 War Information Bureau and the Prisoner of War
18 Internment Camp.

19 Page 3.

20 (Reading) "Organization of The Prisoner
21 of War Information Bureau.

22 "Article 1. The Prisoner of War Information
23 Bureau shall be under the jurisdiction of the
24 Minister of War and take charge of the following
25 affairs:

1 "1. Investigation concerning the state of
2 the detention, movement, release on parole, exchange,
3 escape, hospitalization and death of prisoners of
4 war and matters concerning the making and amending
5 of their individual records.

6 "2. Matters concerning the communication
7 of conditions of prisoners of war.

8 "3. Matters concerning the custody of
9 articles and wills left by prisoners of war who
10 have been released on parole, exchanged, escaped
11 or died at hospital, dressing station or a Prisoner
12 of War Internment Camp and forwarding of these
13 articles to the bereaved families or other related
14 persons.

15 "4. Matters concerning the handling of
16 money and articles presented to or sent by prisoners
17 of war.

18 "5. Matters concerning information obtained
19 by the Army and the Navy with regard to the enemy
20 war dead and the handling of articles and wills left
21 by them and articles found in the battlefields.
22

23 "6. Investigation into conditions of
24 persons who have been taken prisoner in an enemy
25 country and matters concerning the assistance to
the communication between these persons and their

1 families and other related persons in Japan."

2 We skip to Article 3.

3 "Article 3. The Prisoner of War Information
4 Bureau shall be located in Tokyo.

5 "Article 4. There shall be instituted
6 one Director and four Secretaries (Jirukan) in
7 the Prisoner of War Information Bureau. However,
8 the number of Secretaries (Jirukan) may be increased
9 as may be needed.

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1 "The Director shall be appointed from
2 among Generals and Secretaries from among Army or
3 Navy commissioned officers below Major General or
4 Rear Admiral or higher officials (Kotokan) of the
5 Army or the Navy.

6 "In addition to the Secretaries (Jimukan)
7 mentioned in the first Paragraph, Secretaries
8 (Jimukan) may be appointed by the Cabinet from among
9 higher officials (Kotokan) of the Government
10 offices concerned in accordance with the recommenda-
11 tion to the Throne by the Minister of War.

12 "There shall be instituted some clerks
13 (Shoki) in the Prisoner of War Information Bureau,
14 who shall be of 'Hannin' rank.

15 "Article 4.

16 "The Director shall be subject to the
17 direction and supervision of the Minister of War
18 and superintend affairs of the Bureau.

19 "Article 5.

20 "The Director may request the Army
21 and the Navy units concerned to furnish him with
22 necessary information in connection with the
23 affairs under his jurisdiction.
24
25

1 "Article 6.

2 "Each Secretary shall take charge of his
3 assigned affairs by order of the Director.

4 "Article 7.

5 "Clerks shall be engaged in routine affairs
6 by order of their superiors"

7 "The Prisoner of War Internment Camp

8 "Article 1.

9 "The Prisoner of War Internment Camp is a
10 place under the jurisdiction of the Minister of
11 War for the internment of prisoners of war.

12 "Article 2.

13 "The Prisoner of War Internment Camp
14 shall be established as necessity arises. Its loca-
15 tion, opening and closure shall be decided upon by
16 the Minister of War.

17 "Article 3.

18 "The Prisoner of War Internment Camp shall
19 be administered by the Commander in Chief of an
20 Army or a Garrison as provided for by the Minister
21 of War and shall be superintended by the Minister
22 of War.

23 "Article 4.

24
25

1 "There shall be instituted the following
2 personnel in the Prisoner of War Internment Camp:

3 "Commandant.

4 "Staff members.

5 "Non-commissioned officers and civil
6 officials of 'Hannin' rank.

7 "Article 5.

8 "The Commandant shall be under the command
9 of the Commander in Chief of an Army or a Garrison
10 and superintend affairs of the Camp.

11 "Article 6.

12 "Each staff member shall take charge of his
13 assigned affairs by order of the Commandant.

14 "Article 7.

15 "Non-commissioned officers and civil offic-
16 als of 'Hannin' rank shall be engaged in routine
17 affairs by order of their superiors.

18 "Article 8.

19 "The Commander in Chief of an Army or a
20 Garrison may, if necessary, detail his subordinates
21 to assist in the execution of affairs of the Camp.

22 "Those who have been detailed in accordance
23 with the provision of the preceding Paragraph shall
24
25

1 be subject to the direction and supervision of the
2 Commandant of the Camp."

3 We now read Exhibit No. 93 presented by the
4 prosecution which are Imperial Ordinances concern-
5 ing Appointment of Service Ministers. These
6 Ordinances will show part of the Organization of
7 the Japanese Cabinet. Concerning the objective of
8 these ordinances a certain witness will testify
9 later on. I will read only the Imperial Ordinance
10 No. 63 and 64, of the Year 1936. Pages No. 5 and 6
11 of English translation.
12

13 Now we read exhibit No 93, presented by
14 the prosecution, which are Imperial ordinances
15 concerning appointment of service Ministers.

16 These ordinances will show part of the
17 organization of the Japanese Cabinet. Concerning
18 the objective of these ordinances a certain wit-
19 ness will testify later on. I will read only the
20 Imperial Ordinance numbers 63 and 64 of 1936, pages
21 5 and 6 of the English text.

22 "Imperial Ordinances of 1936.

23 "1. Appointment of the Minister of War,
24 Imperial Ordinance No. 63 (amendment of the organi-
25

1 zation of the Ministry of War), promulgated on May
2 18, 1936.

3 "The following amendment shall be made
4 of the organization of the Ministry of War:

5 "No. 1 of the Remarks in the appended table
6 shall be amended to read No. 2 and the subsequent
7 Numbers shall be moved down in order, and the fol-
8 lowing Number shall be added as No. 1.

9 "1. Persons to be appointed Minister or
10 Vice Minister shall be Generals in active service.

11 "Supplementary Provision.

12 "The present Ordinance shall be enforced
13 as from the date of promulgation.

14 "2. Appointment of the Minister of the
15 Navy, Imperial Ordinance No. 64 (amendment of the
16 organization of the Ministry of the Navy), promul-
17 gated on May 18, 1936.

18 "The following amendment shall be made of
19 the organization of the Ministry of the Navy:

20 "No. 1 of the Remarks in the appended table
21 shall be amended to read No. 2 and the subsequent
22 Numbers shall be moved down in order, and the
23 following Number shall be added as No. 1.
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1 "1. Persons to be appointed Minister and
2 Vice Minister shall be admirals in active service."

3 THE PRESIDENT: The accused HIROTA was
4 Prime Minister at that time, as appears from the
5 exhibit.

6 MR. SMITH: I think there may be some doubt
7 about that date, your Honor.

8 THE PRESIDENT: I am going by the exhibit
9 exhibit 93, page 5.

10 MR. BROOKS. If your Honor please, while
11 we have a break here on this procedure I would like
12 to call the Court's attention to prosecution exhibit
13 83, on page 4, the regulations for the conduct of
14 business of the Privy Council, Articles 1 and 2.
15 Article 1 provides that "the Privy Council shall
16 formulate its opinion on matters submitted to its
17 deliberation by order of the Emperor"; and Article
18 2 that "the Privy Council cannot receive petitions,
19 representations, or other communications from the
20 Imperial Diet, from either House of the same, from
21 any Government Office, or from any of Japanese sub-
22 jects whatever."

23
24 These make clear the nature of the body as
25

1 purely an advisory body, and were left out in the
2 former reading.

3 THE PRESIDENT: I don't think any of us
4 thought it was an executive body. It may be for-
5 mally so. The English Privy Council is formally
6 the executive.

7 THE MONITOR: Was that "formerly" or
8 "formally"?

9 THE PRESIDENT: F-o-r-m-a-l-l-y.

10 MR. ONO: We now read exhibit No. 94 presen-
11 ted by the prosecution, which is the Imperial Ordin-
12 ance relating to the Organization of the Ministry
13 of the Imperial Household, to show the duties and
14 competence of the Minister of the Imperial Household.

15 "ARTICLE 1 - The Minister of the Imperial
16 Household shall be of 'Shinnin' rank. He shall be
17 responsible for assistance to the Emperor in all
18 affairs pertaining to the Imperial Household."

19 THE PRESIDENT: That is all you need to
20 tell us.

21 MR. ONO: We now read exhibit No. 95 pre-
22 sented by the prosecution, which is the Imperial
23 Ordinance relating to the Organization of the Office
24
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1 of the Lord Keeper of the Privy Seal, to shew the
2 duties and competence of the Lord Keeper of Privy
3 Seal.

4 "ARTICLE 1 - The Office of the Lord Keeper
5 of the Privy Seal shall keep custody of the Privy
6 Seal and the Great Seal, and take charge of affairs
7 concerning Imperial Rescripts, Imperial Messages
8 and other documents of the Inner Court.

9 "ARTICLE 2 - The Lord Keeper of the Privy
10 Seal shall be of 'Shinnin' rank. He shall regularly
11 assist the Emperor and supervise the Office of the
12 Lord Keeper of the Privy Seal.

13 ARTICLE 3 - The Lord Keeper of the Privy
14 Seal shall refer to the Minister of the Imperial
15 Household the conferment of Court Ranks and Orders
16 on the personnel of the Office of the Lord Keeper
17 of the Privy Seal and other matters concerning the
18 promotion and dismissal of such personnel.

19 "ARTICLE 4 - There shall be instituted in
20 the Office of the Lord Keeper of the Privy Seal the
21 following personnel:

22 "Chief Private Secretary.

23 "Private Secretaries.
24
25

"Clerks.

"ARTICLE 5 - There shall be one Chief Private Secretary of 'Chokunin' rank. He shall take charge of documents.

"ARTICLE 6 - There shall be two full-time Private Secretaries of 'Senin' rank. They shall take charge of documents and general affairs.

"ARTICLE 7 - The Clerks shall be of 'Hon-nin' rank. They shall engage in general affairs."

We now read Exhibit No. 97 presented by the Prosecution which are the Imperial Ordinances concerning Appointment of Minister without Portfolio. These will show the number of Ministers without Portfolio was increased from three to four in 1943. Only the Ordinance of November 17, 1943, will be read.

THE PRESIDENT: There is no need to read it.

MR. ONO: We now read Exhibit No. 98 presented by the Prosecution which is the new Peace Preservation Law. This will show that this law was enacted for the purpose of preventing the underground activities of Communist Party and of maintaining the security of State. Concerning the motives

1 of this legislation and enforcement of this law a
2 certain witness will testify later on.

3 THE PRESIDENT: That witness may refer to
4 this law so far as necessary. Nothing is to be
5 gained by reading the law now.

6 MR. ONO: We now read Exhibit No. 167 pre-
7 sented by the Prosecution. I will read the regula-
8 tions of the Imperial Rule Assistance Movement. This
9 will show the nature of the Imperial Rule Assistance
10 Association especially that it was not a political
11 party. Concerning the activities of this movement,
12 a certain witness will testify later on.

13 THE PRESIDENT: This is a very important
14 association, but I suggest again that you had better
15 wait until the witness is giving evidence, when he
16 may refer to this.
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THE PRESIDENT: Dr. KIYOSE.

1 DR. KIYOSE: I should like now to have the
2 witness FUJITA, Tsuguo brought into the court room
3 for purposes of direct examination. The witness is
4 now in the anteroom.

- - -

6 T S U G U O F U J I T A, called as a witness on
7 behalf of the defense, being first duly sworn,
8 testified through Japanese interpreters as
9 follows:

DIRECT EXAMINATION

11 BY DR. KIYOSE:

12 Q What is your name?

13 A FUJITA, Tsuguo.

14 Q Please give us briefly your curriculum vitae.

15 A I graduated from the department -- from a
16 course in political science from the College of Law,
17 Tokyo Imperial University, in April 1910.

18 Q And what profession did you exercise after
19 that?

20 A 1917 to 1934 I occupied the offices of
21 secretary or counselor in the War Ministry.

22 Q What were your duties at that time?

23 A My duties were that of a legal counselor
24 with respect to military administration.

25 Q Please tell us what happened after your

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1 resignation, your retirement in August 1934.

2 A I pursued the study of the Constitution at
3 home.

4 Q Did you obtain a degree in any university?

5 A I received the degree of Doctor of Laws
6 from the Tokyo Imperial University in May 1937.

7 Q In what matter was this?

8 A It was on my study of military administra-
9 tion in Europe and America.

10 Q Can you testify on the Japanese Constitu-
11 tion and on the competence of the different organs
12 of the Japanese government and particularly on the
13 organization of the armed forces?

14 A I think I can.

15 Q Then first of all may I inquire, Mr. Wit-
16 ness, as to your knowledge of the fundamental principle
17 of the Japanese Constitution?

18 A Generally the Japanese -- there are four
19 principles underlying the Japanese Constitution.

20 Q Will you tell us these in succession?

21 A First is the division of powers into three
22 branches. That, needless to say, is legislative
23 power, judicial power and executive power. And under
24 Article IV of the Constitution the emperor exercised
25 the prerogative of government as the head of state,

1 the sovereign head of state; and his legislative
2 rights are exercised on the approval of the legis-
3 lative branch of the government, namely, the parlia-
4 ment. The executive powers are exercised with the
5 assistance of the cabinet. The judicial powers are
6 exercised by the judiciary in the name of the emperor.
7 That is the first principle.

8 Second -- number two, the popular freedom
9 or freedom of the people is guaranteed. The popular
10 freedom can not be restricted without law. That is
11 stipulated in the Constitution.

12 The third principle is the supremacy of
13 law. Law can not be revised or abolished. That is,
14 statutes can not be abolished by order. However,
15 under Article VIII laws can be changed or abolished
16 by emergency imperial ordinance, however such an
17 ordinance must be presented to the following session
18 of the Diet for the Diet's approval. If that approval
19 is not obtained that ordinance becomes null and void.
20

21 The fourth principle relates to the budget.
22 Without a budget the national -- the government --
23 no state action could be taken.

24 Generally speaking the four above mentioned
25 principles are the basic principles underlying the
Japanese Constitution.

1 Q Can I understand that in the testimony you
2 have given when you have spoken of statutes or laws
3 they are statutes or laws which have been passed by
4 the approval of the Japanese parliament?

5 THE MONITOR: This relates to the first
6 principle.

7 A Yes, I am referring to the statutes which
8 have been approved and passed by the Imperial Diet.

9 Q What are the most important organs in the
10 state organs which are recognized by the Constitution?

11 A The organs recognized by the Constitution
12 are the political organs, the military and naval
13 organs, the judicial organs, and organs relating to
14 the imperial household.

15 Q What you mentioned in second -- do you mean
16 the high command or supreme command?

17 A That is what I mean.

18 Q What are the organs, political organs you
19 mentioned first, let us say the political organs?

20 A I mean by that the cabinet.

21 Q Then I should like to ask you some questions
22 about the organization of the Japanese cabinet.

23 A The cabinet is composed of various ministers
24 of state.

25 Q What are the ministers of state?

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1 A There were thirteen ministers of state as
2 of December 1941.

3 Q Can you give us the names of these thirteen?

4 A Prime Minister, Foreign Minister, Finance
5 Minister, War Minister, Navy Minister, Judicial
6 Minister, Education Minister, Minister of Agriculture
7 and Forestry, Minister of Commerce and Industry, Min-
8 ister of Communications, Minister of Railways, Min-
9 ister of Overseas Affairs, Minister of Welfare.

10 THE PRESIDENT: We will recess for fifteen
11 minutes.

12 (Whereupon, at 1045, a recess was
13 taken until 1105, after which the proceed-
14 ings were resumed as follows:)

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Greenberg & Morse

1 THE PRESIDENT: Dr. KIYOSE, the Members of
2 this Tribunal generally feel that we are deriving no
3 assistance from this type of evidence. The Japanese
4 Constitution is a written one. It appears in the
5 exhibits. The material parts of those exhibits have
6 been collated and read to us by Brigadier Nolan. There
7 is no contest about what he said. If there is any
8 departure in practice from the Japanese Constitution
9 that could be stated. But it would have to be justified
10 as quite legal; and how could it be? Not a single
11 issue before us turns on the question of whether the
12 Japanese constitution was observed or broken. I assert
13 that. How can that have any bearing on aggressive
14 war or conventional war crimes or crimes against
15 humanity? I know that some of the features of the
16 constitution were taken advantage of, or some of their
17 laws, to permit whatever the Japanese did which is now
18 claimed to have constituted war crimes. But why have
19 another lengthy dissertation in addition to that already
20 given by Brigadier Nolan and which, as I repeat, is
21 not questioned. Foreign law we know is a question of
22 fact which must be proved by expert witnesses and
23 what is the need of the proof?

24 DR. KIYOSE: Your Honor, from our point of
25 view in the explanations given by Brigadier Nolan there

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1 are many mistakes. In Japanese constitutional
2 practice there is not only the written constitution
3 and also usages concerning the constitution -- customs,
4 usages and customs. If your Honor would allow me I
5 could indicate which are those mistakes but I don't
6 know if it is proper to do so in front of the witness.

7 THE PRESIDENT: Of course it is. You can
8 refer him to things which Brigadier Nolan said which
9 you challenge and ask him what his view is. As an
10 expert he can give it. Your witness is not called here
11 to confirm the prosecution's witnesses but to contra-
12 dict them or to supplement what they say. Let him
13 confine his evidence to contradictions or additions.

14 DR. KIYOSE: Your Honor, the statement made
15 by Brigadier Nolan was an opening statement that wasn't
16 evidence nor testimony.

17 THE PRESIDENT: It was followed up by ex-
18 hibits. Being a matter of fact, it would have to be
19 proved by evidence. If any law is foreign to us, this
20 Tribunal, it must be the Japanese law. We cannot
21 take judicial notice of that unless we exercise
22 special powers under the Charter. We must have the
23 evidence before us like any other evidence of fact.

24 DR. KIYOSE: In order to hasten the proceed-
25 ings then I shall only take up certain points in the

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1 statements of Brigadier Nolan and point out the mis-
2 takes and then continue giving the evidence -- present-
3 ing the evidence.

4 THE PRESIDENT: Nothing more is necessary for
5 a fair trial of the accused.

6 DR. KIYOSE: May I continue? The statement
7 made by Brigadier Nolan that the different organs
8 are separated is not correct.

9 THE MONITOR: The statement made by Brigadier
10 Nolan that the powers were divided among various
11 Japanese organs is inaccurate.

12 DR. KIYOSE: Under the Japanese constitution
13 all powers are centered upon the Emperor but as the
14 Emperor does not exercise the right of veto all organs
15 are able to operate -- to act autonomously.

16 THE MONITOR: All organs came to act
17 independently.

18 DR. KIYOSE: As a result of this development
19 it became impossible for various organizations to come
20 together for purposes, for instance, of conspiracy.

21 THE PRESIDENT: I told you, Dr. KIYOSE, that
22 you had to read to the witness the parts of Brigadier
23 Nolan's statement that you challenge and invite the
24 witness' opinion. I don't want you to give your
25 opinion.

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1 DR. KIYOSE: Next Brigadier Nolan stated that
2 all Japanese laws were presented to parliament after
3 having come before the Privy Council. He also stated
4 that the Japanese parliament had no initiative as to
5 legislation. Brigadier Nolan stated that the Prime
6 Minister could direct the other ministers of state.

7 THE MONITOR: Brigadier Nolan stated in such
8 a way as to give the impression that the Prime Minister
9 leads or directs other ministers.

10 THE PRESIDENT: You must read from what
11 Brigadier Nolan said to the witness; read to the
12 witness.
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1 MR. SMITH: If your Honor please, on behalf
2 of Mr. HIROMA. I would like an exception to the ruling
3 of the Court.

4 THE PRESIDENT: You have your exception. I
5 was hoping you might say something useful.

6 DR. KIYOSE, proceed as I directed, please,
7 but read from the record.

8 DR. KIYOSE: They have just gone to fetch
9 Brigadier Nolan's statement. If the Court please,
10 wait a little. It would be convenient if the Court
11 would recess for a few minutes.

12 THE PRESIDENT: You are not prepared to
13 examine the witness along these lines. You came here
14 prepared for him to wander along repeating all that
15 Brigadier Nolan had said. Let the witness stand down,
16 and we can proceed with some other part of the case.

17 DR. KIYOSE: Would your Honor allow me, then,
18 to ask some questions concerning matters which Briga-
19 dier Nolan has not mentioned?

20 THE PRESIDENT: You may.

21 BY DR. KIYOSE (Continued):

22 Q Mr. Witness, what is the written law in our
23 country concerning the relations between the Supreme
24 Command and affairs of state?

25 A That is stipulated in Articles 11, 12 and 55

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1 of the Japanese Constitution.

2 DR. KIYOSE: That, Mr. President, is exhibit
3 68.

4 Q What is the next thing?

5 A Article 7 of the regulations governing the
6 organization of the Japanese Cabinet.

7 DR. KIYOSE: Which is exhibit 70.

8 Q Next?

9 A Article 1 of the regulations governing the
10 organization of the War Ministry and Article 1 of
11 the regulations governing the organization of the
12 Navy Ministry.

13 DR. KIYOSE: These are exhibit numbers 74
14 and 75.

15 A (Continuing) The next is Article 1 of the
16 regulations of the General Staff Office. The next
17 is Article 1 of the organization of the Naval General
18 Staff Office.

19 DR. KIYOSE: Exhibit 78 and 79.

20 A (Continuing) Then, in wartime, the Ordinance
21 of the Imperial General Headquarters.

22 DR. KIYOSE: Exhibit 70.

23 Q Is that all?

24 A As to the Constitution, Imperial Ordinance
25 and Organizational Regulations; that is all.

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1 Q Are there any other rules or regulations
2 made by the Army or the Navy?

3 A In addition, there is the rules and regula-
4 tions made by the War Ministry concerning the War
5 Office, the Inspector-General of Military Education,
6 and of the General Staff, made in August, 1913; and
7 there are also rules and regulations governing the
8 Navy Ministry and the Naval General Staff office of
9 1933.

10 Q Please explain to us briefly the existing
11 relations between the Army's executive powers --
12 between the Supreme Command and the administration of
13 state affairs.

14 THE MONITOR: Will you please explain con-
15 cisely the relationship between the powers of the
16 Supreme Command in the Army and the powers of mili-
17 tary administration, that is, of the administration
18 in the military.

19 A That may be divided into three points:
20 first, matters purely concerned with the Supreme
21 Command; second, purely administrative matters; and
22 third, mixed matters which relate to both.

23 Q What are concretely the matters relating to
24 purely the Supreme Command?

25 A As to purely Supreme Command matters, they

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1 are, one, mobilization plans, two, plan of operations,
2 three, battle array, and four, field service regula-
3 tions.

4 Q Who handles these matters?

5 A These matters are in the hands of the Army
6 General Staff office and the Naval General Staff
7 office.

8 Q What are the matters which you mentioned
9 secondly concerning purely administrative, military
10 administrative matters?

11 A Purely military administrative matters I
12 mean the organization of institutions and schools,
13 accounts of the Army and Navy recruiting and requis-
14 tioning.

15 Q As concerns recruiting, are all matters con-
16 cerning recruiting administrative?

17 A As to how many men are to be recruited every
18 year the matter is handled as a General Staff matter.

19 Q What part of recruiting is an administrative
20 matter?

21 A The War Minister is in charge of actually
22 recruiting, and the number of armed forces is deter-
23 mined by the General Staff.

24 Q Who is responsible for the administrative
25 matters?

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1 A In the Army the War Minister, and in the
2 Navy the Navy Minister.

3 Q What are the mixed matters that the witness
4 mentioned?

5 A This refers to the decision of the size of
6 the standing army and navy, and also plan of national
7 defense.

8 Q Why are they called mixed matters?

9 A That is because on the one hand it is a Gen-
10 eral Staff matter, and on the other a matter relating
11 to military administration.

12 Q How are these mixed matters handled?

13 A With reference to General Staff matters the
14 matter is handled by consultation between the Chief
15 of the General Staff for the Army and Chief of the
16 Naval General Staff.

17 Correction: In the Army the matter is handled
18 through consultation between the Chief of the General
19 Staff and the War Minister, and in the Navy, the Chief
20 of the Naval General Staff and the Navy Minister.

21 THE MONITOR: That is to say, on matters in
22 which a decision can be reached in that way.

23 Q In time of war when Supreme Headquarters
24 had been established, the Imperial GHQ was established,
25 does the same difference exist between the administrative

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1 and purely military matters?

2 THE MONITOR: Purely Supreme Command matters.

3 A The same difference exists as in peace time.

4 Q Then in war time, matters concerning the
5 Supreme Command are under the responsibility of the
6 Chiefs of the Army and Navy Staffs?

7 A Yes, naturally.

8 Q What is the position of the Commander in
9 Chief of the Expeditionary Forces in the Field?

10 A That is stipulated in the order organizing
11 his particular army.

12 Q What you mean by the Army is the expedition-
13 ary forces, is that right?

14 A Yes.

15 Q Does the responsibility of the Minister of
16 State under the constitution have anything to do with
17 the Supreme Command which you mentioned first?

18 A The 23d year of Meiji, that is around 1890,
19 and since then, the interpretation of the constitution
20 is that ministers of state have no responsibility with
21 respect to the Supreme Command.

22 Q Is there anything to prove that this usage
23 has been established?

24 A In March, 1925 the Government made the
25 following declaration in the House of Peers: That

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1 is to say Article 55 of the constitution does not
2 apply to the Supreme Command. However, there are
3 matters pertaining to the Supreme Command which have
4 intimate relationship with matters of state adminis-
5 tration, and the interpretation of the government at
6 that time was that the Minister of State will be
7 responsible for matters which fall within that cir-
8 cumscribed area in which such intimate relationship
9 is required.

10 Q What are the matters termed as having inti-
11 mate relationships in the statements you have just
12 cited?

13 A That refers to the mixed matters to which
14 I have already referred.

15 Q Then can we understand that the matters re-
16 ferred to in that third category; that is to say,
17 the decision of the size of the standing Army and
18 Navy and the plan of national defense, are those
19 mixed matters?
20

21 A Yes.

22 Q How is the responsibility for these matters?

23 A Responsibilities which are related to the
24 administration of state is borne by the Minister of
25 State, whereas responsibilities relating to matters
of the Supreme Command are borne by the Chiefs of

FUJITA

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1 the Army and Navy General Staffs.

2 Q Is that an inconvenience for the carrying out
3 of war operations, the system which you have just
4 described; namely, that the responsibility concerning
5 military administration affairs and Supreme Command
6 affairs have been differentiated and the responsibility
7 divided?

8 A Yes, it causes inconvenience in the prosecu-
9 tion of war.

10 Q Has anything been thought of to alleviate
11 these inconveniences?

12 A Yes, since the outbreak of the China Inci-
13 dent, the Consultative Conference between the Govern-
14 ment and the Armed Forces Liaison Conference and the
15 Supreme Council for the Direction of War.

16 Q Has there been three organs; that is to say,
17 the Consultative Conference, the Liaison Conference
18 and the Supreme Council for the Prosecution of War?

19 A Yes.

20 Q Will you please state the nature of the
21 Liaison Conference?

22 A This is a conference comprised of representa-
23 tives of the Supreme Command and the cabinet.

24 Q What is its legislative nature?

25 THE MONITOR: What is its legislative basis.

1 A Simply that matters were discussed there and
2 not decided there.

3 Q Where then is the decision taken?

4 A The decision is made after an agreement has
5 been reached at the Liaison Conference through deci-
6 sions, and this decision is made, for instance, by the
7 War Minister with respect to matters pertaining to
8 his department after he returns to his own ministry.

9 Q Is that for administrative matters?

10 A Yes.

11 Q But how about matters concerning the Supreme
12 Command?

13 A With respect to Supreme Command matters, the
14 matters are carried out for the Army by the Chief of
15 the General Staff.

16 Q Then, do you mean that matters agreed upon
17 at the Liaison Conference are decided finally either
18 at the cabinet or at the Supreme Command organs, de-
19 pending on their character; that is, depending on the
20 nature of the matter?

21 A It is as you have just stated, Mr. Counselor.

22 Q Enough for the Liaison Conference. Now, what
23 is the Consultative Conference?

24 A I think it is of the same character as the
25 Liaison Conference to which I have just referred.

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1 Q Is it the same for the Supreme Council
2 for Direction of War which has been in existence
3 since the KOISO Cabinet, or is the basis, is the
4 legal basis of this body different or not?

5 A In character it is the same, but there is
6 some difference.

7 Q What is this point?

8 A It is that Imperial sanction was received
9 in connection with its establishment.

10 Q Do you know that during the war there was
11 a so-called conference in the Imperial Presence?

12 A I do.

13 Q Could you tell us clearly the nature of this
14 conference?

15 A The purpose of the conference in the Imperial
16 Presence is to coordinate matters with respect to the
17 administration of state and the Supreme Command by the
18 representatives of the government; that is, the cabinet
19 and the high command in the presence of the Emperor.

20 Q When a conference is called in the presence
21 of the Emperor by what means is the responsibility for
22 the decision decided?

23 A In the event that the representatives of the
24 government and of the Supreme Command come to a full
25 agreement at a conference in the presence of the

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1 Emperor, the decision is not taken there, but that
2 matters pertaining to state affairs are decided upon
3 by the State Minister after he returns to his office,
4 and matters pertaining to the Supreme Command are
5 decided by the Chiefs of the Army and Navy General
6 Staffs.

7 Q Then, can I understand that the only dif-
8 ference between this conference in the Imperial
9 Presence and the conferences as you have mentioned
10 before; the Consultative Conference and Liaison Con-
11 ference and the Supreme Council for the Direction of
12 War, that the only difference between them is that
13 the Emperor was present at the conference in the
14 Imperial Presence, but that in nature no difference
15 excepting, naturally, that more important matters can
16 be discussed there?

17 THE MONITOR: Aside from the question of
18 importance, all of these four organs are the same in
19 character; that is our understanding, is that right?

20 A That is so.

21 Q Mr. Witness, you said that the Consultative
22 Conference, the Liaison Conference and the Supreme
23 Council for Direction of War were created since the
24 beginning of the China Affair. Then, can you tell
25 us if since between 1928 and the China Incident there

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1 was any organ in existence in Japan to establish a
2 relationship between the administration, the govern-
3 ment administration, and the Supreme Command?

4 A I do not know.

5 Q From your knowledge of the American consti-
6 tution, Mr. Witness, is there any difference between
7 the position of Secretary of War and the Secretary
8 of the Navy of the United States Government, and the
9 War Minister and Navy Minister of the Japanese Govern-
10 ment, or are they the same?

11 A No, there are differences.

12 THE PRESIDENT: It may be relevant, but I
13 cannot see it if it is.

14 We will adjourn until half past one.

15 (Whereupon, at 1200, a recess was
16 taken.)
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1 AFTERNOON SESSION

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1 I shall quote from the opening statement made by
2 Brigadier Nolan. I shall commence at page 522 of
3 the record, page 3 of page 522:

4 "It should be mentioned at that stage that
5 in Japan the Ordinance power goes far beyond the
6 effectuation of statutes and the delegation of
7 functions, to which the Ordinance power is essentially,
8 though not entirely, restricted in countries like
9 Great Britain and the United States."

10 Q Mr. Witness, do you think that this is an
11 accurate statement?

12 A No, I don't think it is an accurate statement.

13 Q Then please state your views on the subject.

14 A There is a distinct -- clear distinction
15 between statutes and ordinances from the point of
16 view of the Constitution.

17 Q What is the difference, Mr. Witness?

18 A In principle statutes cannot be -- neither
19 be abolished nor revised by ordinances.

20 Q Are there certain items which cannot be
21 stipulated other than by statutes in our country?

22 A There are many matters which cannot be
23 stipulated by other methods than statutes from the
24 point of view of the Constitution.

25 Q Can you state the principal matters or

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1 principal points as briefly as possible?

2 A One of the instances is the matter concern-
3 ing personal liberty of the Japanese people. The
4 restriction of the personal liberty of the Japanese
5 people cannot be restricted unless by law.

6 DR. KIYOSE: I shall next quote, Mr.
7 President, from page 534 of the record. I refer
8 you, Mr. President, to the last paragraph on that
9 page:

10 "The Prime Minister also has the power to
11 serve concurrently as a Minister of State, and this,
12 as will be seen, has been done a number of times.

13 Q Is this statement correct, Mr. Witness?

14 A That statement is not correct.

15 Q How would you express this matter correctly,
16 Mr. Witness?

17 A The Prime Minister is one of the state
18 ministers.

19 Q What does he do when he concurrently holds
20 another portfolio of state?

21 A In that event he should be granted another
22 appointment by the Emperor to hold concurrently another
23 post of state minister.
24

25 THE PRESIDENT: It can be done sub modo.
That is all it amounts to.

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1 DR. KIYOSE: Next, Mr. President, I refer
2 you to page 548 of the record. The following passage
3 is found about the middle of the page. On this page
4 is found the following passage:

5 "They organized the Privy Council to be a
6 permanent governmental institution. Each is policy
7 forming, and each is advisory. The Privy Council
8 also exercises the legislative function."

9 Q Is the Privy Council, Mr. Witness, policy
10 forming?

11 A It is never policy forming.

12 Q Is that by custom or is that stipulated by
13 law?

14 A It is stipulated in the law governing the
15 organization of the Privy Council.

16 Q If you recall that particular stipulation,
17 will you state that to the Court?

18 A It is stipulated that the Privy Council
19 may act in an advisory capacity but it cannot inter-
20 fere with legislative and administrative affairs.

21 Q The statement here says that each is advisory.
22 Does that mean that the Cabinet becomes advisory?

23 A The Cabinet is not advisory.

24 Q Does the Privy Council exercise the legisla-
25 tive function?

TSUGUO

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1 A The Privy Council does not exercise
2 legislative functions.

3 DR. KIYOSE: We proceed next, Mr. President,
4 to page 550, at the bottom of the page:

5 "The relations of the Council to the State
6 are both executive and legislative. It amends many
7 of the drafts of new laws and ordinances before they
8 are submitted to the Diet."

9 Q Mr. Witness, is this accurate?

10 A That is not accurate.

11 Q What is the power of the Privy Council
12 with respect to this point?

13 A The Privy Council should give advice to
14 the Throne pertaining to the matters of law, bills --
15 The function of the Privy Council is to respond in
16 an advisory capacity to inquiries from the Throne
17 with respect to bills related with the Constitution.

18 Q What does the Privy Council advise upon --
19 what kind of ordinances does the Privy Council advise
20 upon, speaking of Imperial ordinances?

21 A It responds to the Throne pertaining to the
22 matters as found in Article 9 of the Constitution with
23 respect to emergency matters.

24 Q Is there anything else?

25 A It also ratifies -- correction: it also

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DIRECT

1 responds to the queries of the Throne pertaining
2 to important educational matters -- important
3 ordinances relating to education.

4 Q Do organizational regulations come within
5 that category?

6 A Yes, it advises the Throne concerning laws
7 governing the organization of the Cabinet and each
8 ministry.

9 DR. KIYOSE: Mr. President, I next refer the
10 Court to page 555 of the record. It is a little long
11 but I shall read it. This is the first new paragraph
12 on that page:

13 "With the gradual development of a parlia-
14 mentary system, however, the Diet has tended to
15 exert an increasing influence, though indirect and
16 often ineffective, over foreign policies as well as
17 over domestic affairs, through legislation, fiscal
18 control and parliamentary debates. Nevertheless, its
19 powers although extensive are not exclusive; they are
20 secondary, not primary; the Diet is competent to
21 apply checks but cannot initiate policy."

22 Q Mr. Witness, is it true that the Diet cannot
23 initiate policy?

24 A That is incorrect.

25 Q What is the correct view, Mr. Witness?

TSUGUO

DIRECT

1 A If a bill concerning a policy presented
2 by members of the Diet is voted and accepted the
3 policy is decided upon.

4 Q Does the Japanese Diet have the right to
5 initiate law?

6 A The Diet has the right, the power, to
7 present a bill to the Diet.

8 Q Is that by custom or is that clearly
9 stipulated by law?

10 A It is clearly stipulated in the Constitution.

11 THE PRESIDENT: Is the witness speaking of
12 the old Constitution? Brigadier Nolan was.

13 THE WITNESS: I am testifying about -- on
14 the basis of the old Constitution, your Honor.

15 Q Mr. Witness, are there actual cases in which
16 bills on policy initiated by the Diet have been decided?

17 A Although I do not recall exactly here, if
18 my memory serves me right, I think there was a case
19 of a press law initiated by the Diet and which subse-
20 quently was adopted and became a law.

21 Q At the outset of the passage which I have
22 just quoted, Mr. Witness, were these words: "With
23 the gradual development of a parliamentary system,
24 however, the Diet has tended to exert an increasing
25 influence." By what method is this done or was this

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done?

1 A There are two methods for it. Firstly,
2 it is done in the form of interpolations with two
3 speeches of the Foreign Minister and the Prime
4 Minister concerning their policies. Secondly, in
5 the form of questions put to the budgetary commission
6 as it is necessary to allot expenditure to exercise --
7 to carry out the policy of a nation. Questions are
8 put in the general meeting of the committee, the
9 budgetary commission, or the subcommittee of the
10 same commission -- subcommittee meetings of this
11 same commission.

12 DR. KIYOSE: I will next proceed, Mr.
13 President, to page 558. I refer you to the last
14 part, the last portion.

15 "No official can combine his office with
16 membership in the House of Representatives. Cabinet
17 members are one of the exceptions to this rule."
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1 Q Who are government officials other than
2 members of the Cabinet who can be a member of the
3 House of Representatives concurrently?

4 A There are Parliamentary Vice-Ministers and
5 Secretaries and Councilors in various Ministries.

6 Q What are the kinds of Parliamentary officers?

7 A Parliamentary Ministers and Councilors --
8 Parliamentary Councilors.

9 Q Were they permitted to hold concurrently
10 the office of the Chief Secretary of the Cabinet?

11 A Yes.

12 Q Even though a Minister of State is not
13 appointed from among the members of the House of
14 Representatives, could the Diet, that is, the lower
15 House, exercise political influence?

16 A Yes, there are cases.

17 DR. KIYOSE: Mr. President, may I call
18 your attention to page 563. I refer you, Mr. Presi-
19 dent, to the passage indicated by Roman numeral VI:

20 "It", that is, the Diet, "has little to do
21 with treaties and major policies in foreign relations.
22 The Constitution is very brief in its treatment of
23 foreign relations, confining itself to the statement:
24 'The Emperor declares war, makes peace and concludes
25 treaties.'"

FUJITA

DIRECT

1 Q Is it correct to say that the Diet hardly
2 participate in the making and concluding of treaties?

3 A It is rather incorrect.

4 Q What would be a correct expression?

5 A My idea -- my interpretation is that
6 although the Emperor concludes treaties, the Diet
7 can modify those treaties or influence those treaties
8 by interpellating at the Diet -- the right of
9 interpellation.

10 DR. KIYOSE: The next page, 564, sir, I
11 refer you to the passage indicated by Roman numeral
12 VIII:

13 "The Government also monopolizes the
14 introduction of bills into the Diet."

15 I think testimony on this question has
16 already been concluded or sufficiently covered.

17 Q But, is this passage correct, Mr. Witness?

18 A That is not correct.

19 DR. KIYOSE: Next I refer you, Mr. President,
20 to page 565. I refer you, Mr. President, to the
21 quoted passage, the second paragraph of that page.

22 "The legislative power is ultimately under
23 the control of the Emperor, while the duty of the
24 Diet is to give advice and consent."

25 Q Is that correct, Mr. Witness?

FUJITA

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1 A It is not correct. It is not a correct
2 interpretation -- expression.

3 Q This is a very important point, Mr. Witness.
4 Will you please give me your views as simply and
5 clearly as possible?

6 A Although the Diet has a right to give consent
7 to bills, the Emperor has never exercised his veto to
8 those bills which have already been passed by the
9 Diet.

10 DR. KIYOSE: Next I refer the Court to
11 page 569 of the Record. Reading from the last line --
12 this is in relation to reserve expenditures --
13 starting at the last line:

14 "Thus it will be seen that the Diet endows
15 the Government with blanket power to employ the
16 reserve fund in its discretion, but it is entitled
17 to a report upon such expenditures at a subsequent
18 session."

19 Q Is there or is there not an independent
20 organ which examines this before it is reported to
21 the Diet?
22

23 A Yes, there is an independent organ which
24 is called the Board of Auditors.

25 Q What does that Board do?

 A It makes inquiries as to whether those reserve

FUJITA

DIRECT

1 expenditures have been properly compiled or not and
2 makes reports thereof.

3 Q I now refer you to page 607. The passage
4 I refer to speaks of the powers of the Ministry of
5 Home Affairs. This passage states:

6 "The Ministry of Home Affairs.....
7 is charged with the responsibility for domestic
8 relations and conditions within the interior.
9 Because of its control of State Shinto, the police
10 and fire departmental systems, together with the
11 conscription system, war-time price enforcement and
12 general elections, this Ministry reaches into the
13 family life of every subject in Japan." There are
14 many things stated in this passage, Mr. Witness, but
15 is it correct to say "control of State Shinto"?

16 A That statement is not correct.

17 Q What Ministry of the Government handles
18 religion in Japan, Mr. Witness?

19 A The Education Ministry handles the matter.
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1 Q What is the meaning of the fact that the
2 Home Office is connected with Shinto affairs?

3 A The Home Office supervises shrines,
4 not as a religion but for administrative purposes,
5 that is, the handling of funds, and so forth.

6 DR. KIIYOSE: Next, Mr. President, I refer
7 you to page 615. This passage refers to the Min-
8 istry of Justice, towards the bottom of the page.
9 This passage reads: "The Minister of Justice is
10 responsible for the administration of civil and crimi-
11 nal law and penal institutions. Supervising authori-
12 ty is exercised over the procurators and judges."

13 Q Is this a correct interpretation of the
14 Japanese judicial system?

15 A It is not so.

16 Q In what respects is this statement wrong?

17 A The Justice Minister has nothing to do with
18 conducting of trials.

19 Q On what basis do the judges conduct trials?

20 A They conduct trials by law.

21 Q What are their relations with the Minister
22 of Justice?

23 A He is controlled by the Minister of Jus-
24 tice in administrative affairs but not in the
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DIRECT

matters pertaining to the trials.

1 Q And that means he has not one iota -- he
2 does not exercise one iota of interference with
3 regard to judgments.

4 A It is not permitted for him, that is, for
5 the Justice Minister, to interfere with the sen-
6 tences.

7 Q How about under actual conditions?

8 A It is also so in actual conditions.

9 DR. KIIYOSHI: Lastly on page 616 of the rec-
10 ord, the latter part of the first new paragraph on
11 that page. This passage states: "He, that is, the
12 Minister, appoints judges and procurators, and
13 whether they are promoted or not depends upon his
14 recommendation."

15 Q Now, Mr. Witness, does the Minister of
16 Justice appoint judges and procurators?

17 A The Justice Minister never appoints the
18 judges and procurators.

19 Q Who appoints them?

20 A It is the Emperor himself who appoints them.

21 Q Does the promotion of judges and procurators
22 depend upon the recommendation of the Minister of
23 Justice?
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1 A I think so.

2 Q I don't know which passage it was in
3 Brigadier Nolan's statement, but was it not after
4 the outbreak of the China Incident that the Cabinet
5 Councilar system was established?

6 THE MONITOR: The counsel says he withdraws
7 that question.

8 Q My inquiry is, Mr. Witness, was there such
9 a system of Cabinet Councilors prior to the out-
10 break of the China Affair?

11 A I have no correct memory about that mat-
12 ter now.

13 DR. KIYOSE: This concludes my direct exam-
14 ination of this witness. The Prosecution may cross-
15 examine this witness.

16 BRIGADIER NOLAN: With the permission of
17 the Tribunal, there are one or two points that I
18 would like to bring out in cross-examination, if
19 I may.

20 THE PRESIDENT: Is there any intention of
21 any other defendant to cross-examine, although he
22 is a defendant's witness?

23 MR. LOGAN: I don't believe so, your Honor.
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1 THE PRESIDENT: I take it he is called on
2 behalf of all the defendants. Therefore there is
3 no cross-examination by the defendants; but there
4 may be cases in which the defendants would be en-
5 titled to cross-examine another defendant's witness.
6 Then a question arises as to the order of cross-
7 examination, as to whether the prosecution should
8 precede the defense.

9 MR. BROOKS: If your Honor please, I have
10 a minor question I would like to ask of the wit-
11 ness. However, I would like first to hear the cross-
12 examination of the prosecutor. He may cover the
13 point himself. If he does not --

14 THE PRESIDENT: We treat him as your wit-
15 ness, Mr. Brooks, but we may give you permission to
16 re-examine after Brigadier Nolan has cross-examined.

17 MR. BROOKS: That is what I was going to
18 suggest.

19 BRIGADIER NOLAN: If I may venture to
20 suggest, Mr. President: It is our view that the
21 witness, having been called on behalf of one or more
22 of the accused, it would be more proper if they com-
23 pleted and concluded their cross-examination before
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FUJITA

1 the prosecution were called upon to cross-examine.

2 THE PRESIDENT: That may well be the case,
3 Brigadier Nolan, but this witness is Mr. Brooks'
4 witness and he can only ask a question in re-ex-
5 amination.

6 MR. BROOKS: Your Honor, the witness is not
7 my witness.

8 THE PRESIDENT: The witness of all the
9 defendants, we take it, and therefore your wit-
10 ness as well as the witness of others.

11 MR. BROOKS: I would say, your Honor, that
12 a correct statement would be that he is a witness of
13 the majority, possibly, of the defendants, and I am
14 not too correct as to that, because some of them are
15 not even affected by what points this man is bring-
16 ing up, and some of them may want to attack him
17 later on. I am not sure.

18 THE PRESIDENT: Proceed with your cross-
19 examination, Brigadier.

20 BRIGADIER NOLAN: There is just one other
21 point I desire to bring up, that if and when the
22 defendants do cross-examine, we feel that it should
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1 be made perfectly clear whether they are adopting
2 the whole or any part of the evidence, or whether
3 they are treating the witness in any respect as a
4 hostile witness.

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1 MR. LOGAN: If the Tribunal please, I think
2 this question of examination of witnesses by defense
3 is of sufficient importance it should be referred
4 to chambers and straightened out there. That is --

5 THE PRESIDENT: Now, this is the position,
6 Mr. Logan. We don't know yet whether this witness is
7 a witness for all of the defendants or for some only.

8 MR. LOGAN: I understand that Dr. KIYOSE
9 was authorized by the Chief of Japanese counsel to
10 examine this man on behalf of all the accused, but
11 I think, your Honor, that the question of procedure
12 should be referred to chambers for future witnesses.

13 THE PRESIDENT: It is primarily a question for
14 determination in open court, but if it is referred to
15 chambers by my colleagues I will be quite happy to deal
16 with it. I think we will take the hurdle when we reach
17 it, Brigadier. You better go on to cross-examination.
18 BY BRIGADIER NOLAN: (Continuing)

19 Q Dr. FUJITA, a few moments ago you spoke about
20 the appointment of judges by the Emperor. Upon whose
21 recommendation does the Emperor so appoint?

22 A With respect to judges of the Chokunin rank
23 the recommendation is made to the Emperor after it
24 has passed a cabinet council meeting.

25 Q And so far as judges of lower rank are concerned,

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1 does the cabinet deal with those appointments?

2 A With respect to judges of the Sonin rank,
3 the Minister of Justice makes the recommendations to
4 the Throne through the Prime Minister.

5 Q Some reference was made to the fact that the
6 Ministry of Education was in charge of the State Shinto
7 religion. Has the Home Ministry control over the funds
8 of that religion?

9 A I think you misunderstood my reply to some
10 extent, Mr. Prosecutor. I said that the Minister
11 of Education controls or supervised the Shinto religion,
12 but not its administration.

13 Q And what I want you to tell me is what ministry
14 controls and supervises the administration?

15 A The Home Office was responsible for the
16 administration of shrines.

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1 Q On page 565 of the record this language
2 appears and was read to you: "The legislative
3 power is ultimately under the control of the
4 emperor, while the duty of the Diet is to give
5 advice and consent." And I understood you to say
6 that you disagreed with that statement. Is that so?

7 A Yes, I said that the expression as just
8 quoted was inaccurate.

9 Q From whose writing was this quotation taken?
10 Do you know?

11 A I do not know.

12 Q If I told you it was from ITO's Commentaries
13 would you change your view as to its correctness?

14 A Yes, from the standpoint of law, inasmuch
15 as this is -- it is so stipulated in the Constitution
16 it may be said as correct -- said to be correct.

17 Q At page 558 a reference was made by you to
18 the fact that parliamentary vice ministers and coun-
19 selors might be members of the House of Representa-
20 tives. Have they always had this right, Dr. FUJITA?

21 A I do not know what you mean by right --
22 such right.

23 Q I understood you to say that they were en-
24 titled to be members of the House of Representatives.

25 A Yes, I said so.

FUJITA

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1 Q Then did they first acquire this right?

2 A I do not recall at the present moment but
3 I think it was quite a long time ago that that right
4 was acquired.

5 Q Does it carry with it the right to vote?

6 A Yes, as a member of the House they have a
7 right to vote.

8 Q At page 564 Dr. KIYOSE read these words to
9 you: "The government also monopolizes the introduc-
10 tion of bills into the Diet." I read to you the
11 next three lines: "Members have the right to intro-
12 duce bills and they do, but the mortality of such
13 bills is severe."

14 Do you agree with this last read state-
15 ment?

16 A Actually there are more government bills
17 introduced by the government and fewer bills intro-
18 duced by the Diet itself, and actually speaking the
19 bills introduced by the Diet are of less importance.

20 Q And much fewer in number?

21 A Yes.

22 Q On page 563 your attention was drawn to
23 this excerpt: "It (meaning the Diet) has little to
24 do with treaties and major policies in foreign
25 relations. The Constitution is very brief in its

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CROSS

1 treatment of foreign relations, confining itself to
2 the statement, 'The Emperor declares war, makes
3 peace and concludes treaties.'" And you said, Doctor,
4 that that statement was rather incorrect, did you
5 not?

6 A I think my expression was insufficient.
7 Although the emperor has the prerogative to make war
8 and conclude treaties I meant to say in reference
9 to this that the Diet had certain rights to exercise
10 influence over these matters.

11 THE PRESIDENT: Brigadier, we will recess
12 for fifteen minutes.

13 ("Thereupon, at 1445, a recess
14 was taken until 1500, after which the
15 proceedings were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Brigadier Nolan.

4 BRIGADIER NOLAN: If it please the Tribunal.

5 BY BRIGADIER NOLAN (Continued):

6 Q Dr. FUJITA, at the break we were dealing with
7 the statement on page 563 where it was stated that
8 "It," the Diet, "has" very "little to do with treat-
9 ies and major policies in foreign relations"; and you
10 said the statement was hardly correct. Did I under-
11 stand you aright?

12 A I said: Legally speaking, the Emperor had
13 the prerogative to declare war and conclude peace but
14 that the Diet, through the right of interpretation,
15 could bring political influence to bear on such ques-
16 tions.

17 Q I read to you from the same page a quotation
18 from ITO's commentaries at page 28, as follows:

19 "The principal object of the present article
20 is to state that the Emperor shall dispose of all
21 matters relating to foreign intercourse with the ad-
22 vice of his ministers but allowing no interference by
23 the Diet therein." Do you agree with ITO's statement,
24 Doctor?
25

A Legally, that is so.

FUJITA

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1 Q Earlier this afternoon you made some refer-
2 ence to the Privy Council and to its powers. What
3 would happen under the Japanese Constitution if the
4 Privy Council withheld its approval from an enactment
5 upon which that approval was required?

6 A If the Privy Council entertained a differ-
7 ent opinion on a certain bill, and if that bill
8 happened to be an unimportant bill, there would be --
9 the government would withdraw that bill.

10 Q What would they do if it were an important
11 bill?

12 A If the bill happened to be an important one,
13 the bill would either be changed or it may cause the
14 resignation of the Cabinet.

15 Q During the morning session, doctor, you made
16 reference to, amongst other conferences, the Liaison
17 Conference; and you said that representatives of the
18 Cabinet attended such conferences. What ministerial
19 offices were represented at such a conference?

20 A I cannot say who attended those conferences
21 because the internal constitution of that conference
22 has not been made public.

23 Q You do not even know the ministries which
24 were represented there?

25 A I understand from the newspapers that the

FUJITA

CROSS

1 Prime Minister and the War and Navy Ministers attended
2 those meetings -- and such persons attended the meet-
3 ings.

4 Q Do you understand from the newspapers whether
5 any more ministers attended?

6 A I do not recall correctly at the present
7 moment, but I think the Foreign Minister was also
8 in attendance.

9 Q Was the Chief of Staff there for the Army
10 and for the Navy?

11 A Of course, being a liaison conference, I
12 think these two men attended the meetings.

13 Q Do you think the President of the Planning
14 Board attended?

15 A That I do not know.

16 Q Did I understand you to say this morning
17 that no decision was reached at liaison conferences
18 but that the decision was taken by the minister when
19 he returned to his office?

20 A Maybe my explanation was not very good or
21 insufficient, but what I meant to say was that those
22 members of the liaison conference who participated in
23 the meetings, following an agreement of opinions or
24 views there, returned to their respective posts and
25 there carried out the decisions in connection with

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1 matters pertaining to his particular jurisdiction,
2 Ministers of State carrying out matters under their
3 jurisdiction, and matters pertaining to the Chief of
4 the Naval or Army General Staff being carried out by
5 their respective departments.

6 Q In other words, when they returned to their
7 offices, they carried out the decisions which had
8 been come to at the Liaison Conference?

9 A My understanding is that not a decision of
10 the Liaison Conference but an agreement of views at
11 the Liaison Conference.

12 Q Which had to be unanimous, Dr. FUJITA.

13 A I understand that since there could not be
14 an opposing opinion there was unanimity of agreement.

15 Q Is it not a fact that the decisions of the
16 Liaison Conference were invariably approved by the
17 Cabinet when referred back to that body?

18 A That fact I do not know.

19 Q Do you know if a cabinet minister is re-
20 sponsible for decisions of the cabinet outside the
21 sphere of his own ministry?

22 A The cabinet minister holding a certain port-
23 folio is responsible for the decisions of the cabinet
24 as a minister of state but not as a minister of a
25 particular department of the government.

FUJITA

CROSS

1 Q And in giving advice or assistance to the
2 Throne, he is jointly responsible with all other
3 cabinet members for such advice or assistance.

4 A In the Japanese Constitution it is stipu-
5 lated "the ministers of state," but it is not stipu-
6 lated that it is a common responsibility of all
7 cabinet ministers.

8 THE PRESIDENT: Major Furness.

9 MR. FURNESS: We object to this line of
10 cross-examination on the ground that it is beyond
11 the scope of the direct examination. That applies
12 to the last two questions.

13 THE PRESIDENT: Obviously, it is not. He
14 came here to testify on the Japanese Constitution
15 generally, and the cross-examination is well within
16 it. The objection is overruled.

17 MR. FURNESS: Might we ask whether he is
18 testifying as to juridical theory or as to legal
19 responsibility?

20 THE PRESIDENT: There is no need for such
21 refinements as those. He is testifying as to the
22 meaning and effect and the operation of the Japanese
23 Constitution.

24 BRIGADIER NOLAN: I have no further ques-
25 tions.

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1 THE PRESIDENT: I have a question here:

2 You stated, witness, that the liberty of the
3 subject could only be restrained according to law.
4 A witness before us has testified that he was kept
5 in prison for eighteen months before being brought
6 to trial, that he was then discharged for want of
7 evidence, but eighteen months later was brought to
8 trial where he was found not guilty.

9 Assuming that witness is telling the truth,
10 can you reconcile the treatment meted out to him
11 with the Japanese Constitution as you stated it?

12 THE WITNESS: The actual question itself,
13 I think, was an illegal act on the part of the
14 government authorities.

15 THE PRESIDENT: Well, the Constitution says
16 one thing, but the authorities do another.

17 THE WITNESS: With special respect to the
18 incident involving me, I should say that those
19 authorities who handled the case committed illegal
20 acts.

21 THE PRESIDENT: Dr. KIYOSE.

22 REDIRECT EXAMINATION

23 BY DR. KIYOSE:

24 Q Among the matters pointed out by Brigadier
25 Nolan reference was made to the commentaries of

FUJITA

REDIRECT

1 Prince ITO. When were those commentaries written?

2 A Although I have no correct memory about that
3 matter, I think it was written before -- about the
4 time of the promulgation of the Constitution.

5 Q Then that means around 1889 or 1890, is
6 that so?

7 A That is so.

8 Q Mr. Witness, is there any difference between
9 the words or the language of the Japanese Constitution
10 at the time of its promulgation and the language of
11 the Japanese Constitution after a lapse of fifty
12 years and the development of various customs and
13 usages -- actual practice, that is?

14 A At the time Count ITO wrote the book
15 "Constitutional Diet," he intended to explain in
16 that book for what purpose the Japanese Constitution
17 should be used. However, after that time, various
18 differences, practices or interpretations of the Consti-
19 tution were introduced. Therefore, his book can be
20 used as a good difference, but it cannot be utilized
21 for anything more.

22 THE MONITOR: It cannot be entirely relied
23 upon.

24 Q In response to a question by Brigadier
25 Nolan you said, "Legally speaking, yes, that is,

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1 according to the language of the law." May I under-
2 stand that it does not change the facts?

3 THE MONITOR: Correction of the latter part:
4 May I understand that what you said before with re-
5 spect to the facts has changed?

6 A Yes, that is correct.

7 MR. USAMI: Counsel USAMI.

8 THE PRESIDENT: Yes, counsellor.

9 BRIGADIER NOLAN: Mr. President, we object
10 to counsel for other accused cross-examining this
11 witness, if that is what he proposes to do, after
12 we concluded our cross-examination.

13 THE PRESIDENT: As far as I am aware, he
14 may be there to reexamine. Even in that light there
15 might be a question.

16 BRIGADIER NOLAN: Mr. President, we submit
17 that the reexamination is over and that Dr. KIYOSE
18 reexamined for and on behalf of all of the accused.

19 THE PRESIDENT: He examined in chief on
20 behalf of them all. So Mr. Logan told us. I think
21 the counsel at the lectern now should put his ques-
22 tions through Dr. KIYOSE, assuming, of course, it is
23 reexamination.

24 MR. USAMI: It is reexamination, your Honor;
25 and, therefore, I shall ask Dr. KIYOSE -- ask these

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1 questions through Dr. KIYOSE. May I have your per-
2 mission, your Honor, to take just a few minutes?

3 REDIRECT EXAMINATION

4 BY DR. KIYOSE (Continued).

5 Q In reply to a question from Brigadier Nolan
6 in the course of cross-examination, you, Mr. Witness,
7 said that in case the Privy Council refused to ap-
8 prove a bill submitted by the government, the govern-
9 ment would either have the alternative either of
10 changing that bill or may have to resign. With
11 respect to your words "may resign," may we have a
12 fuller and clearer meaning? Is that a very positive
13 statement you made?

14 A What I meant was, that is, as I did not
15 remember -- could not remember actual examples of
16 it, I framed my answer in that manner -- it was a
17 hypothetical case.
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1 THE PRESIDENT: The answer seems to be
2 quite adequate.

3 Q Just one more, sir. Are there any actual
4 examples of members of a cabinet as members of the
5 Privy Council pushing certain bills through in spite
6 of the Privy Council's opposition?

7 A I don't remember of any such facts or instances.

8 DR. KIYOSE: This concludes the re-examination,
9 your Honor, but we should like to reserve the right
10 to recall this witness in the future when and if neces-
11 sary.

12 MR. LOGAN: If the Tribunal please, we do not
13 feel that a precedent should be established by what
14 has occurred here this afternoon. The Charter
15 specifically provides that an accused shall have the
16 right through himself or through his counsel, but
17 not through both, to conduct his defense, including
18 the right to examine any witness, subject to such
19 reasonable restrictions as the Tribunal may determine.
20 Now, while it is true that Dr. KIYOSE did examine this
21 witness on direct on behalf of all the accused, we
22 feel that any other counsel may have the right to re-
23 examine if he so desires. But in the order of orderly
24 procedure with respect to future witnesses ~~might I again~~
25 recommend, make the suggestion, that this be taken up

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1 in Chambers because it is a matter of vital importance
2 to all the accused, and there are various views on
3 it and I don't think we should waste the time of the
4 Tribunal in open court doing it. The importance of
5 this will appear as more witnesses will be called.
6 In view of the fact that we expect to call some next
7 week, may I suggest that we set it down for nine o'clock
8 Monday morning in Chambers?

9 THE PRESIDENT: Mr. Comyns Carr.

10 MR. COMYNS CARR: Your Honor, in our submission,
11 if the matter is as important as the defense
12 represent it to be -- and we agree that it is -- it is
13 a matter which will ultimately have to be decided by
14 the whole Tribunal and referring it to Chambers will,
15 therefore, not result in a saving of time.

16 THE PRESIDENT: Well, I suggested what you
17 have already said this afternoon, Mr. Comyns Carr,
18 that primarily this is a matter for the whole Court,
19 but it may be that if we send it to Chambers we will
20 there be able to straighten it out to the satisfaction
21 of the prosecution and of the defense. Apparently
22 the defense are prepared to cooperate to a reasonable
23 extent and we take the opportunity of meeting them
24 in Chambers. I think that is the wish of the Judges.

25 MR. COMYNS CARR: If your Honor pleases. We

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1 have no objection, your Honor. My friend, Mr. Logan,
2 now suggests that Tuesday morning would be a more
3 convenient time to them than Monday, if that would suit
4 your Honor equally well.

5 THE PRESIDENT: I fix Tuesday morning at
6 nine o'clock with the concurrence of the Tribunal.

7 The witness is no longer required. He will
8 be released on the usual terms.

9 (Whereupon, the witness was excused.)
10

11 THE PRESIDENT: Major Blakeney.

12 MR. BLAKENFY: May it please the Tribunal:

13 Owing to mechanical difficulties we have not
14 quite complied with the rule of service of documents.
15 I am advised by the prosecution that they have no objec-
16 tion, however.

17 My task is to present to the Tribunal addition-
18 al evidence bearing on the present state of the inter-
19 national law of concern to us in this case, as it is
20 to be discovered in the pronouncements and the actions
21 of nations. Before proceeding to the proof I should
22 like, if I may, to explain briefly the method of
23 presentation which we propose. It is in general that,
24 in so far as international law is to be regarded as
25 being a description of the prevailing standard of

1 conduct of nations -- which conduct must of course be
2 proved by evidence as any other fact -- we shall produce
3 evidence of it. But to the extent that international
4 law is a jurisprudence of precedent -- may I say, "of
5 statute and decision"? -- it is perhaps debatable
6 whether the Tribunal will ex mero motu take cognizance
7 of it, as our courts do of their domestic law, or
8 require it to be proved as is the usual practice where
9 the municipal law of a foreign jurisdiction is con-
10 cerned. Out of precaution, we shall therefore at
11 appropriate times in the course of the defense tender
12 evidence of such international law also.

13 Firstly, then, I shall offer proof of a
14 number of acts of nations having probative force on
15 the questions of the legality of resort to belligerent
16 acts, the responsibility of individuals therefor, and
17 allied points. At the outset I wish to read from the
18 Report of the Commission of Enquiry Appointed by the
19 League of Nations to investigate the Appeal of China --
20 commonly known as the Lytton Commission report --
21 prosecution exhibit 57. I shall read from page 35 of
22 exhibit 57, the third paragraph:

23 "The declarations of policy made in 1919
24 and 1920 by the Soviet Government with regard to China
25 implied a complete relinquishment of the special rights

1 which the Imperial Government had acquired in China,
2 notably those acquired in North Manchuria.

3 "In accordance with this policy, the Soviet
4 Government agreed to the regularisation of the fait
5 accompli by a new agreement. By the Sino-Russian
6 Agreement of May 31st, 1924, the Chinese Eastern Rail-
7 way became a purely commercial concern under joint
8 management, in which China also acquired a financial
9 interest. The Government of the U.S.S.R. had, how-
10 ever, the right of appointing the General Manager
11 (who exercised extensive and ill-defined powers) and,
12 under the Agreement, the Government of the U.S.S.R.
13 exercised a preponderant influence in the affairs of
14 the railway and was able to retain the essential parts
15 of its economic interests in North Manchuria. As
16 mentioned above, the Agreement of May 1924, concluded
17 with the Chinese Government at Peking, was not accepted
18 by Marshal Chang Tso-lin, who insisted on a separate
19 Agreement being concluded with himself. This Agreement
20 signed in September 1924, was almost identical in its
21 terms, but by it the lease of the railway was shortened
22 from eighty to sixty years.

23 "This Agreement did not inaugurate a period
24 of friendly relations between the U.S.S.R and the
25 administration of Marshal Chang Tso-lin in Manchuria.

1 "The convening of the conference which was
2 to deal with the many questions left unsettled in the
3 two Agreements of 1924 was postponed on various pre-
4 texts. On two occasions, in 1925 and 1926, the General
5 Manager of the Chinese Eastern Railway refused to
6 transport troops of the Marshal on the railway. The
7 second incident led to the arrest of the General
8 Manager and to an ultimatum from the U.S.S.R.
9 (January 23rd, 1926). Nor were these isolated inci-
10 dents. Nevertheless, the Chinese authorities persisted
11 in a policy which was directed against Russian inter-
12 ests and which was resented both by the Government of
13 the U.S.S.R and by the White Russians.

14 "After the adherence of Manchuria to the
15 Nanking Government, nationalist spirit increased in
16 strength, and the efforts of the U.S.S.R. to maintain
17 predominating control over the railway were, more than
18 ever before, resented. In May 1929, an attempt was
19 made to liquidate the last remnants of the Russian
20 Sphere of interest. The attack started with a raid
21 on the Soviet consulates at various places by the
22 Chinese police, who made many arrests and claimed to
23 have found evidence proving that a Communist revolution
24 was being plotted by employees of the Soviet Government
25 and of the Chinese Eastern Railway. In July, the

1 telegraph and telephone systems of the railway were
2 seized, and many important Soviet organisations and
3 enterprises were forcibly closed down. Finally, the
4 Soviet Manager of the railway was requested to hand
5 over the management to a Chinese appointee. He re-
6 fused to do so and was thereupon forbidden to carry
7 on his duties. The Chinese authorities replaced freely
8 members of the Soviet staff by their own nominees, many
9 Soviet citizens were arrested, and some were deported.
10 The Chinese justified the violent action taken on the
11 ground that the Soviet Government had broken its pledge
12 not to engage in propaganda directed against the
13 political and social systems of China. The Soviet
14 Government, in its note of May 30th, denied the charge.

15 "In consequence of the forcible liquidation
16 of the remaining Russian rights and interests, the
17 Soviet Government decided to take action. After the
18 exchange of several notes, it recalled from China its
19 diplomatic and commercial representatives, and all its
20 nominees to posts in the Chinese Eastern Railway, and
21 severed all railway communications between its terri-
22 tory and China. China, likewise broke off relations
23 with the U.S.S.R. and withdrew all Chinese diplomatic
24 officers from Soviet territory. Raids by Soviet
25 troops across the Manchurian border began and developed

1 into a military invasion in November 1929. After
2 having suffered defeat and severe loss of prestige, the
3 Manchurian authorities, to whom the Nanking Govern-
4 ment entrusted the settlement of the dispute, were
5 forced to accept the demands of the U.S.S.R. On
6 December 22nd, 1929, a Protocol was signed at Hebarovsk
7 whereby the statu quo was re-established. During
8 the dispute, the Soviet Government had always taken the
9 position, in answer to various memoranda from third-
10 Power signatories to the Pact of Paris, that her
11 action had been taken in legitimate self-defence and
12 could in no way be interpreted as a breach of that
13 agreement.

1 The purpose of this evidence is to show that during
2 the period included in the Indictment herein the
3 U.S.S.R., one of the prosecuting nations, carried out
4 an invasion of Manchuria--for which invasion, it is
5 to be noted, neither was the U.S.S.R. censured by the
6 Lytton Commission nor was it condemned nor punished
7 by the League itself or by any other authority.

8 At the time of this invasion there were in
9 effect the following treaties and conventions, to
10 the material parts of which I make reference: The
11 Covenant of the League of Nations, prosecution exhibit
12 23 (especially Article X), the Convention between
13 Japan and the U.S.S.R. of 20 January 1925, prosecution
14 exhibit 31 (see Article V) and the Pact of Paris,
15 prosecution exhibit 32.

16 Our next documents reflect an event which is
17 perhaps unique: A judgment by nations in congress
18 assembled upon aggressive conduct of one of their num-
19 ber. The document consists of excerpts from the
20 Official Journal of the League of Nations, dealing
21 with the question of aggression by the U.S.S.R.
22 against Finland and with the action of the League
23 on the appeal of Finland. I tender the Journal for
24 identification, and offer in evidence the first
25 excerpt, defense document No. 475B.

1 THE PRESIDENT: Mr. Comyns Carr.

2 MR. COMYNS CARR: We must take objection to
3 this document 475B, which is the first of the docu-
4 ments referred to in Mr. Logan's introductory speech
5 to which we took objection at the time, and reference
6 to which he omitted at the suggestion of the Presi-
7 dent.

8 In our submission it is entirely irrelevant
9 to go into the question whether there was some breach
10 by some other country, whether or not a party to
11 these proceedings, of the same treaties which we are
12 accusing these defendants of a breach. That can
13 throw no light on the true interpretation of the
14 treaties, and can only result, if it results in any-
15 thing at all, in a collateral inquiry as to the rights
16 and wrongs of that particular matter, which inquiry
17 will be outside the jurisdiction of this Tribunal,
18 and greatly and unnecessarily prolong these proceed-
19 ings.

20 THE PRESIDENT: Under our Charter, Major
21 Blakeney, our only jurisdiction is to try the Japan-
22 ese major war criminals, to use the expression in
23 the Charter. How do you propose that this material
24 should be used?

25 MR. BLAKENEY: I propose that the Tribunal

1 should receive this and similar material to assist
2 it in determining what is the international law
3 under which these defendants stand accused.

4 THE PRESIDENT: You are not suggesting that
5 any prior breach of the Pact of Paris completely
6 destroyed it?

7 MR. BLAKENEY: That statement is a correct
8 statement of our position, except that I might qualify
9 it by saying that as a subsidiary point, not our main
10 point. We do of course contend for the rule mentioned
11 by the President a day or so ago that a pact may fall
12 into desuetude as the result of repeated violations.

13 THE PRESIDENT: Such arguments are suggested
14 by a writer or writers on international law.

15 This is a major question, Major Blakeney,
16 and I think we should consider it.

17 Do you wish to say any more?

18 MR. BLAKENEY: I am prepared, sir, to argue
19 it quite fully and desire to do so.

20 THE PRESIDENT: We would like to hear whatever
21 argument you have to offer, or that Mr. Comyns Carr
22 has to offer.

23 We will adjourn until half past nine Monday
24 morning.

25 Whereupon, at 1600, an adjournment

was taken until Monday, 3 March 1947, at
0930.)

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